

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 17, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP326

Cir. Ct. No. 2012CV1049

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WELLS FARGO BANK N.A.,

PLAINTIFF-RESPONDENT,

V.

2611 LAND TRUST AND BUFFY JEAN COUCH,

DEFENDANTS,

JAMES W. COUCH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: DEE R. DYER, Judge. *Appeal dismissed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. James Couch, pro se, appeals a default judgment of foreclosure entered in favor of Wells Fargo Bank N.A. Couch argues the circuit

court erred by granting Wells Fargo's motion for default judgment because Couch was not properly served and, as a result, the court lacked personal jurisdiction over him. We agree with Wells Fargo that Couch does not have standing to appeal the foreclosure judgment. We therefore dismiss the appeal.

BACKGROUND

¶2 On October 31, 2002, Couch gave Mortgage Investors Corporation a note in the amount of \$98,520. The note was subsequently endorsed to Washington Mutual Bank, FA, which later endorsed it to Wells Fargo.

¶3 As security for the note, Couch and his wife, Buffy Jean Couch,¹ granted Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Mortgage Investors Corporation, a mortgage on their residence, located at 2611 North Bennett Street in Appleton, Outagamie County, Wisconsin. The mortgage was executed on October 31, 2002, and recorded on November 15, 2002. MERS subsequently assigned the mortgage to Wells Fargo.

¶4 Couch did not actually have any ownership interest in the Bennett Street property at the time he and Buffy executed the mortgage. Instead, the record shows that Couch transferred his interest in the property to "2611 Land Trust, Ann K. Hassett, Trustee" on September 6, 2001. However, that deed was not recorded until April 15, 2003, several months after Couch executed the mortgage. On June 2, 2005, "Ann K. Hassett, as Trustee of 2611 Land Trust[,]"

¹ We refer to Buffy Jean Couch by her first name throughout the remainder of this opinion.

executed a trustee's deed conveying the trust's interest in the property to "2611 Land Trust, James Couch as Trustee[.]"

¶5 In January 2011, Couch and Wells Fargo entered into a loan modification agreement. However, Wells Fargo sued to foreclose the mortgage in July 2012, alleging Couch had defaulted under the terms of the note and modification agreement by failing to make the required monthly payments. The complaint named Couch, Buffy, and 2611 Land Trust as defendants. The complaint also stated that Wells Fargo waived its right to a deficiency judgment against Couch.

¶6 Wells Fargo unsuccessfully attempted to serve Couch with the summons and complaint at the Bennett Street property on five occasions during August 2012. On the second attempt, the process server successfully served Buffy, who informed him that Couch was "gone a lot." During the process server's three subsequent attempts to serve Couch at the Bennett Street property, no one answered the door.

¶7 Because Wells Fargo failed to accomplish personal service on Couch, it proceeded to serve him by publication, both individually and as trustee of 2611 Land Trust. *See* WIS. STAT. § 801.11(1)(c).² The summons was published in the Oshkosh Northwestern newspaper on August 30, September 6, and September 13, 2012. Copies of the summons and complaint were also sent by first-class mail to Couch and 2611 Land Trust at the Bennett Street address.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶8 None of the defendants responded to the complaint. Wells Fargo therefore moved for default judgment. Copies of the motion and related documents were sent to all defendants at the Bennett Street address.

¶9 The circuit court held a hearing on Wells Fargo's motion on December 10, 2012. Couch appeared pro se, arguing he had not been properly served with the summons and complaint, so the court lacked personal jurisdiction over him. The court adjourned the hearing until December 19 and directed Couch to file a motion explaining why service by publication was improper. Couch then submitted an "Affidavit in Opposition to Plaintiff's Motion for Summary Judgment," in which he asserted the process server's efforts to serve him personally were inadequate, and Wells Fargo should have published the summons in the Appleton Post-Crescent instead of the Oshkosh Northwestern.

¶10 At the December 19 hearing, the circuit court concluded Couch was properly served by publication, and he had not submitted any evidence showing that his failure to respond to the complaint was the result of excusable neglect. The court therefore granted Wells Fargo's motion for default judgment and entered a judgment of foreclosure. Couch, pro se, filed a notice of appeal from the foreclosure judgment. Neither Buffy nor 2611 Land Trust filed a notice of appeal.

DISCUSSION

¶11 On appeal, Couch renews his argument that he was improperly served, and the circuit court therefore lacked personal jurisdiction over him. We do not address this issue because we agree with Wells Fargo that Couch lacks

standing to appeal the foreclosure judgment. Accordingly, Couch's appeal must be dismissed.³

¶12 “The essence of the standing inquiry is whether the party seeking review has alleged a personal stake in the outcome of the controversy.” *Kiser v. Jungbacker*, 2008 WI App 88, ¶12, 312 Wis. 2d 621, 754 N.W.2d 180. “A person may not appeal from a judgment unless he or she is aggrieved by it.” *Ford Motor Credit Co. v. Mills*, 142 Wis. 2d 215, 217, 418 N.W.2d 14 (Ct. App. 1987). “A person is aggrieved if the judgment bears directly and injuriously upon his or her interests; the person must be adversely affected in some appreciable manner.” *Id.* Whether an individual has standing to appeal presents an issue of law that we review independently. *Estate of Hegarty v. Beauchaine*, 2006 WI App 248, ¶24 n.11, 297 Wis. 2d 70, 727 N.W.2d 857.

¶13 “The purpose of a foreclosure suit is to enable the mortgagee, or lien holder, to apply the mortgaged property to the debt which it secures.” *Glover v. Marine Bank of Beaver Dam*, 117 Wis. 2d 684, 693, 345 N.W.2d 449 (1984). Here, the foreclosure judgment foreclosed any interest Couch had in the Bennett Street property. To demonstrate that his interest could not be foreclosed because he was not properly served with the summons and complaint, Couch must show that he actually had an interest in the property when the foreclosure judgment was entered. He has not done so.

³ If we did reach the merits of Couch's argument, we would reject it for the reasons stated in Wells Fargo's brief. Service was proper, and the circuit court had personal jurisdiction over Couch.

¶14 The record clearly shows that Couch transferred his interest in the Bennett Street property to 2611 Land Trust, with Ann K. Hassett as trustee, on September 6, 2001. Although Hassett later transferred the trust's interest in the property to "2611 Land Trust, James Couch as Trustee," that transfer did not give Couch any personal ownership interest in the property. Because Couch did not own the property at the time the foreclosure judgment was entered, and because Wells Fargo waived its right to a deficiency judgment against Couch, the foreclosure judgment did not "adversely affect[]" Couch in any "appreciable manner." See *Ford Motor Credit*, 142 Wis. 2d at 217. Couch was not aggrieved by the judgment, and he therefore lacks standing to appeal. See *id.*

¶15 In his reply brief, Couch acknowledges that the Bennett Street property was transferred to 2611 Land Trust for estate planning purposes. However, he claims that without examining the trust documents, we "cannot know the exact nature of ... Couch's interest in the property[.]" He therefore asserts, without citation to authority, that we must "err[] on the side of caution" and assume he has an ownership interest in the property. We disagree. The September 6, 2001 warranty deed clearly shows that Couch transferred his ownership interest in the property to 2611 Land Trust. There is no evidence in the record suggesting that 2611 Land Trust transferred any ownership interest back to Couch. That Couch resides at the property does not prove he has an ownership interest. It merely indicates he is a permissive user or tenant.

¶16 At times, Couch appears to advance arguments on behalf of 2611 Land Trust, for which he is trustee. However, these arguments are not properly before us because 2611 Land Trust did not file a notice of appeal from the

foreclosure judgment. A timely notice of appeal is necessary to give this court jurisdiction over an appeal. *See* WIS. STAT. RULE 809.10(1)(e).⁴

¶17 Moreover, even if we construed Couch’s notice of appeal as having been submitted on Couch’s behalf both individually and as trustee for 2611 Land Trust, it would nevertheless be invalid with respect to the trust. Couch is not an attorney. A trust must be represented by counsel in court proceedings. *See Life Science Church, Bible Camp & Christian Liberty Acad. v. Shawano Cnty.*, 221 Wis. 2d 331, 334, 585 N.W.2d 625 (Ct. App. 1998). “[T]rustees may appear in Wisconsin courts without licensed legal counsel only to represent their own legal interests in their individual capacities, not to represent the legal interests of their trusts or trust beneficiaries in their representative, fiduciary capacities as trustees.” *Id.* Signing and filing a notice of appeal constitutes the practice of law. *See Jadair Inc. v. United States Fire Ins. Co.*, 209 Wis. 2d 187, 204, 562 N.W.2d 401 (1997). Consequently, any notice of appeal filed by Couch on behalf of 2611 Land Trust would be invalid. *See Life Science Church*, 221 Wis. 2d at 334-37 (notice of appeal filed by trustees on behalf of trusts was invalid, requiring dismissal of appeal).

By the Court.—Appeal dismissed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

⁴ Couch also appears to make limited arguments on Buffy’s behalf. Again, Buffy did not file a notice of appeal, so these arguments are not properly before us. *See* WIS. STAT. RULE 809.10(1)(e). In addition, as a nonlawyer, Couch cannot represent Buffy’s interests in court. *See* WIS. STAT. § 757.30 (prohibiting nonlawyers from practicing law).

